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No. 01-1232

IN THE

Supreme Court of the United States

DR. RICHARD KAUFMAN, on behalf of himself and all others similarly situated, *et al.*,
Petitioners,

v.

ALLIED PILOTS ASSOCIATION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Is any ground for review by this Court presented where the U.S. Court of Appeals for the Fifth Circuit, in a unanimous ruling that involves no departure from or conflict among relevant federal decisions, applied the well established *Garmon* preemption doctrine of federal labor law precisely as this Court instructed in *Wisconsin Department of Industry, Labor and Human Relations v. Gould, Inc.*, 475 U.S. 282 (1986), to hold that airline passengers may not pursue state-law claims and remedies against an airline pilots' union for engaging in a peaceful work stoppage prohibited by the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*, and by a federal court injunction specifically enforcing that RLA prohibition?

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case arose from an entirely peaceful February 1999 work stoppage, or "sickout," by the pilots of American Airlines, Inc. ("American"), during which American delayed or cancelled hundreds of scheduled flights due to lack of available crew. The relevant circumstances leading to the Fifth Circuit's November 21, 2001 ruling (Pet. App. A) and the present Petition are as follows:

1. Within days after the work stoppage began, American filed a federal court action alleging that the Allied Pilots Association

("APA") and its members were violating the RLA's ban on strikes over arbitrable disputes. In accordance with the RLA, American concurrently sought a temporary restraining order ("TRO") to halt the prohibited work stoppage. The U.S. District Court for the Northern District of Texas agreed that the RLA prohibited the work stoppage and promptly enforced the RLA with a temporary restraining order ("TRO"), enjoining any and all further refusals to work in violation of the RLA. When the pilots' concerted work refusal continued for approximately two days after the February 10, 1999 TRO, American moved for civil contempt sanctions against the APA and its officers. Those contempt proceedings resulted in a February 12, 1999 order finding the APA and its two top officers in civil contempt, and ultimately a $45,000,000 contempt award levied against the APA. The Fifth Circuit upheld the district court's decision in all respects. Pet. App. A at 4a-5a. *See American Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 577–78, 580, 583 (5th Cir. 2000), *aff'g* 53 F. Supp.2d 909 (N.D. Tex. 1999).[1]

2. After the work stoppage ended, but before the district court issued its final contempt damages award, a number of American's ticket holders filed putative class actions against the APA in various state and federal courts around the country. Those passenger lawsuits, eventually consolidated under Petitioner Kaufman's name in the Northern District of Texas, sought economic damages for inconvenience suffered due to delays and cancellations of American flights by reason of the February 1999 work stoppage. The Kaufman action asserted both federal and state claims, alleging that the pilots' concerted refusal to fly violated the RLA, defied the federal court's TRO, violated the Federal Racketeer Influenced and Corrupt

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[1] The remainder of American's underlying RLA enforcement action against the APA was concluded in April 1999 with the entry of an Agreed Order, Including Permanent Injunction.

Organizations Act, and tortiously interfered with passengers' contracts of carriage on American. The district court dismissed all claims with prejudice except for one portion of the state tortious interference claim seeking damages for the continuation of the work stoppage after entry of the federal TRO. That "post-TRO" claim was dismissed *without prejudice* to refiling in state court. Pet. App. A at 5a.

3. On appeal by the APA, the Fifth Circuit held that the longstanding *Garmon* principle of federal law[2] preempted the passengers' state-law claims and remedies for the "post-TRO" portion of the federally prohibited pilots' strike, just as it indisputably preempted such state claims and remedies for the "pre-TRO" phase of the strike. Pet App. A at 4a, 6a-14a. As this Court explained in *Wisconsin Department of Industry, Labor and Human Relations v. Gould, Inc.*, 475 U.S. 282 (1986), the *Garmon* preemption doctrine not only prevents states "from setting forth standards of conduct inconsistent with the substantive requirements of" federal labor law, but also bars states "from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by" the federal labor statute. Pet. App. A at 9a, citing *Gould*, 475 U.S. at 286. Applying this well settled rule, the Fifth Circuit rejected the passengers' argument that their "post-TRO" claims posed no conflict between the state and federal regimes because the state-law damages they sought for violation of a federal TRO would punish only conduct already prohibited by federal law:

> This argument cannot stand in light of *Gould*. In *Gould* the plaintiff was being punished by the state remedial scheme for its *violations* of federal labor law. There was no

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[2] The *Garmon* principle of federal labor law supremacy, articulated by this Court in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), in the context of conduct governed by the National Labor Relations Act (29 U.S.C. § 151 *et seq.*), was subsequently extended to the RLA (45 U.S.C. § 151 *et seq.*), in *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969). Pet. App. A at 6a n.5.

> contradiction between the two regimes, only a supplementation of the federal remedial scheme by the state. Therefore, the plaintiffs' niggardly view of "conflict" itself conflicts with the Supreme Court's decision in Gould, and must be rejected.

Pet. App. A at 10a-11a. The Court of Appeals similarly rejected the argument that "post-TRO" work refusals should escape *Garmon* preemption because the federal TRO put the APA conclusively "on notice" that the work stoppage was illegal. As Judge Higginbotham explained for the unanimous panel,

> if conduct is *clearly* protected or prohibited by federal labor law, to our eyes the case for preemption is stronger. Consequentially, the issuance of the TRO, indicating that the sick-out was likely to be found illegal under the RLA, only enhances the case for preemption of the state claim here. The concern of *Garmon* is not so much with the righting of labor wrongs, the concern of the labor relations laws themselves, as with the uniformity and singularity of remedy provided by federal law. It is a national labor policy—as this case makes vivid.

Pet. App. A. at 11a (footnote omitted). The court below found no other tenable basis for distinguishing "post-TRO" from "pre-TRO" conduct for *Garmon* purposes, noting that "[s]licing the claim into before and after the TRO does not change the reality that the state law is being asked to take hold of the same controversy as the federal labor laws." Pet. App. A at 13a. Citing this Court's admonition in *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 292 (1971), Judge Higginbotham concluded:

> It is the conduct being regulated, not the formal description of governing legal standards, that is the proper focus of concern. The existence of a TRO does not transform conduct constituting a work-stoppage, and therefore central to federal labor relations law, into conduct falling outside

> of the ambit of *Garmon*. We note also that any effort to characterize this suit as arising out of a violation of the TRO encounters an additional blockade—the plaintiffs are not entitled to any remedy for violation of a TRO to which they are not a party.

Pet. App. A at 13a (quotation and footnotes omitted).

REASONS FOR DENYING THE PETITION

This case involves no departure from controlling law and no conflict among the Circuits. There was no dispute below that a settled principle of federal labor law, the *Garmon* preemption doctrine, governed this case. The Fifth Circuit applied that well established federal preemption rule in precisely the manner prescribed by this Court in *Wisconsin Department of Industry, Labor and Human Relations v. Gould, Inc.*, 475 U.S. 282 (1986). As the Fifth Circuit expressly found and the Petitioners implicitly acknowledge, the circumstances of this case do not trigger either of this Court's recognized exceptions to *Garmon* preemption. Pet. App. A at 7a.

Nonetheless, Petitioners now argue that this case warrants review because (1) the Fifth Circuit failed to apply a separate doctrine of preemption law not advanced by APA below; (2) the RLA's coverage of the work stoppage, and the corresponding federal preemption of state remedies, allegedly ceased once the federal court granted interim injunctive relief enforcing the RLA's no-strike obligation; and (3) state-by-state damages remedies for RLA violations and contempt of federal labor injunctions would allegedly further national labor or national judicial policy and deter further misconduct. We show below that none of these issues justifies review.

1. Ignoring altogether the controlling *Garmon* preemption doctrine, Petitioners argue that their state-law claims escape preemption under the standard of *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994), and *Lingle v. Norge Division of*

Magic Chef, Inc., 486 U.S. 399 (1988), because their claims do not implicate a collective bargaining agreement. Pet. at 5-6. That argument is beside the point, however, for the contractual preemption doctrine of *Lingle* and *Norris* was not the basis for the Fifth Circuit's decision and is not at issue here.[3] Petitioners cannot create an issue warranting review by confusing or conflating two independent strands of federal preemption law.

2. As an alternative ground for review, Petitioners renew their assertions that the federal district court's early intervention under the RLA, to enforce the RLA and temporarily enjoin a nationwide airline strike prohibited by the Act, somehow removed that labor dispute from the ambit of federal labor law and terminated *Garmon* federal preemption. Pet. App. at 6-7. The Fifth Circuit squarely rejected that reasoning, as noted above, finding it unsupported by either law or logic. Pet. App.

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[3] *Lingle-Norris* contractual preemption (also referred to as "complete" preemption in the federal removal context)—a doctrine entirely separate and distinct from the *Garmon* preemption rule that governs this case—ensures the supremacy of federal law and the exclusivity of arbitration in the interpretation and enforcement of collective bargaining agreements subject to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, or to the mandatory adjustment processes of the RLA, 45 U.S.C. § 151a, by preempting state claims, however denominated, that depend for their resolution on interpretation of a collective bargaining agreement. *Norris*, 512 U.S. at 261; *Lingle*, 486 U.S. at 409.

By contrast, the co-existing but wholly independent *Garmon* preemption rule bars state claims and remedies for conduct arguably protected or prohibited by federal labor law, without regard to the existence of any collective bargaining agreement—as even a cursory review of the facts in *Garmon* and *Gould* will confirm. Indeed, the very case that first extended *Garmon* principles to a work stoppage under the RLA, *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969) (Pet. App. A at 6a n.5), involved no intersection of state claims with any collective bargaining agreement. The cases Petitioners cite to illustrate the limits of RLA preemption (Pet. at 3-4) are inapposite here because they address the scope of contractual preemption under *Lingle* and *Norris*, rather than the *Garmon* preemption rule applied below.

A at 13a. Petitioner's argument simply cannot be squared with this Court's decision in *Gould*, which held that the *Garmon* doctrine bars state remedies for federal labor law violations even after exhaustion of all federal court proceedings.[4]

In an unsuccessful attempt to buttress their argument, Petitioners invoke the formula used by this Court to define a narrow exception to *Garmon* preemption, the exception allowing continued state-by-state regulation of certain conduct (such as trespass and violence) touching interests "deeply rooted in local feeling and responsibility." Pet. at 7. The Petition, however, cites no authority recognizing any "deeply rooted" local interest permitting state court intervention, under the varying tort standards of fifty different jurisdictions, to remedy violations of federal court orders in peaceful labor disputes affecting nationwide transportation systems governed by federal labor law.[5] This Court forcefully rejected any such notion in

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[4] Notably, the state law found preempted in *Gould* imposed automatic penalties on any person or firm "*found to be in contempt of court for failure to correct a violation* of the national labor relations act" on three or more occasions within a five-year period, as well as any person or firm found to have violated the NLRA in three judicially enforced decisions within a five-year period. 475 U.S. at 283-84 nn. 1-2, 286-288 (emphasis added). Because the employer invoking preemption in *Gould* incurred state penalties by virtue of repeat federal law violations, rather than for multiple contempt of federal court judgments, the *Gould* Court did not expressly address *Garmon* preemption of state remedies for *federal contempt* of federal court orders in labor cases. Nothing in *Gould*, however, suggests that the *Garmon* analysis differs when state remedies are imposed for violation of a federal court's order in a labor case, whether preliminary or final.

[5] Indeed, the federal courts consistently hold that "business" torts such as interference with contract, predicated on employer or union misconduct in labor disputes, are not "so deeply rooted in local law" as to escape *Garmon* preemption. *See, e.g., Lumber Prod. Indus. Workers Local 1054 v. West Coast Indus. Rel. Ass'n*, 775 F.2d 1042, 1049 (9th Cir. 1985); *In Re Sewell*, 690 F.2d 403, 408 (4th Cir. 1982); *Local 1316, Int'l Bro. of Elec. Workers v. Superior Contractors & Assocs., Inc.*, 608 F. Supp. 1246, 1253 (N.D. Ga. 1985) ("The weight of authority" holds that labor law violations described as

Garmon, *Gould* and *Jacksonville Terminal*, and Judge Higginbotham's sound application of that precedent requires no further elaboration.

3. Last, Petitioners cannot justify Supreme Court review by arguing that state-law tort damages actions would provide a valuable "deterrent" against federal labor violations, or by stressing the allegedly unprecedented factual context of this case. Pet. at 7. *Gould* expressly confirmed that state remedies for federal labor wrongs are preempted even where they clearly serve "to deter labor law violations and to reward fidelity to the law." 475 U.S. at 287-88. And although *Garmon* preemption cases present varying facts, there is nothing novel about application of *Garmon* to preempt "downstream" or "third-party" economic claims based on peaceful, but federally prohibited, labor activity. As the Fifth Circuit noted, *Gould* itself foreclosed state remedies, for the benefit of third parties, against recidivist federal labor law violators. Pet. App. A at 10a-11a. *See also Jacksonville Terminal*, 394 U.S. at 381-82 (barring state injunctive relief to third parties affected by peaceful RLA work stoppage); *United Mine Workers v. Gibbs*, 383 U.S. 715, 7128-20 (1966) (barring claims predicated on non-violent portion of unlawful union protest that disrupted contractor's dealings with employer).[6]

"business torts" clearly "fail to provide sufficiently substantial state concerns to overcome the doctrine of preemption"), *citing Mobile Mech. Contractors v. Carlough*, 664 F.2d 481 (5th Cir. 1981).

[6] As Judge Higginbotham also noted, under settled law governing enforcement of federal court orders generally, it is clear that affected members of the public, such as the airline customers in this case, "are not entitled to any remedy for violation of a TRO to which they are not a party." Pet. App. A at 14a and n. 31, citing *Northside Realty Assocs., Inc. v. United States*, 605 F.2d 1348, 1356-57 (5th Cir. 1979). This principle only underscores the incongruity of Petitioners' assertion that "national judicial policy" would be served by unleashing third-party civil damages actions, under the varying tort law of 50 separate jurisdictions, for violation of federal court orders in federal labor cases.

In essence, Petitioners' "policy" arguments complain that the basic design of the RLA scheme for regulating and resolving labor disputes in the nationwide airline transportation industry—in this case, through imposition of a statutory no-strike obligation, enforceable through interim injunctive relief, backed by the contempt power of the federal courts and a $45 million contempt award—does not do all that it could to assure labor peace and protect the traveling public. That contention is unavailing, however. As this Court has repeatedly emphasized, because "the range and nature of those remedies that are and are not available is a fundamental part of the comprehensive system established by Congress," state law impermissibly "interfere[s] with Congress' integrated scheme of regulation by adding a remedy to those prescribed by" the federal labor statute. *Gould*, 475 U.S. at 287-88 (citations and internal quotations omitted). The Fifth Circuit's proper application of this settled principle to the circumstances before it raises no issue worthy of review by this Court.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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